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Prosecution files motion to dismiss in rock fight

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Jul. 25--GREENUP -- The criminal case against Steve Shaffer, the Ironton historian who led the expedition to remove a historic boulder from the depths of the Ohio River, will apparently be coming to an end without Shaffer being prosecuted

Greenup Commonwealth's Attorney Clifford Duvall on Friday filed a motion to dismiss a felony charge of removing a protected archaeological object without a permit against the 51-year-old Shaffer. The charge is a Class D felony that carries a prison sentence of one to five years. A Greenup County grand jury indicted Shaffer on the charge in June of last year.

In his 12-page motion, Duvall said he was dropping the case because he would not be able to prove beyond a reasonable doubt that the 8-ton boulder that Shaffer and his cohorts pulled out of the river in September 2007 is, in fact, the same Indian Head Rock that was registered with the University of Kentucky as a protected archaeological object in the mid-1980s.

"While the undersigned prosecutor is convinced of the defendant's wrongful intent in raising what he thought was an Indian relic, the defendant is lucky in that it is very questionable whether he has done so," Duvall wrote.

According to the motion, an inscribed rock that was named as "Portsmouth Indian Head Rock," probably at some point in the mid-1800s, was reported to the UK Department of Anthropology in 1985 by a man named James Swauger.

However, there has been more than one rock in the river known as "Indian Head Rock" or "Indian Rock" and there is confusion over which is the "official" one, Duvall wrote.

The rock that was raised from the bottom of the river by Shaffer and a team of rescue divers is inscribed with numerous names and initials dated around the mid-1800s, along with a crude etching that resembles a face.

There is reportedly another rock in the river upriver from the site of the one removed by Shaffer's team that has a likeness of a Native American wearing a headdress on it, according to Duvall.

When Swauger registered Indian Head Rock, he listed its location as "underwater in the Ohio River" and "unknown" on the reporting form. Swauger had never actually seen the rock and knew of it only from reading about it, the motion states.

Various literature describes the "official" Indian Head Rock as being "a colossal human head on the face of a large rock which extended into the river.

"The problem arises, then, as to squaring this description with the fact that the rock lifted from the river by the defendant did not 'extend' into the river," Duvall wrote. "It was a lone rock existing only in the river. Nor was the faced carved upon it 'colossal,' being only seven or eight inches in diameter.

"The official Indian Head Rock cannot be in several places at once," the motion states.

Expert witnesses for the commonwealth were prepared to testify at trial that the carvings on the rock may be Native American in origin, but they would not be able to truthfully testify that they were beyond a reasonable doubt done by Native Americans or pioneers, Duvall wrote.

Duvall said he still believed Shaffer's intent in removing the rock was criminal, based on a term paper he submitted to one of his professors at Marshall University stating that he believed the rock's carvings were done by Native Americans.

"Whether he actually carried out his planned intent on Sept. 9, 2007, is what is not clear. Some of the literature filed by Swauger indicates defendant did carry it out, and some points away from that conclusion."

Given his inability to prove beyond a reasonable doubt a crime was committed, Duvall said he could not, in good conscience, move ahead with the case, which was set to go to trial Aug. 3.

According to Duvall, Shaffer still faces other consequences for his actions, including being cited by the U.S. Army Corps of Engineers for undertaking a dredging operation without a permit.

"He will have to answer for that whether it was Indian Rock or not," the motion states.

Shaffer also is a defendant in a civil suit filed in U.S. District Court by Kentucky Attorney General Jack Conway over the rock's removal. However, Shaffer's attorney, Michael Curtis of Ashland, said Friday the dismissal of the criminal charge could also affect the civil case, since it is largely based on the same statutes as the criminal proceeding.

Curtis, who was unaware of Duvall's filing until told about it by a reporter, said he was pleased with the prosecutor's decision. He also said he had been aware there was some ambiguity as to whether the rock was the "real" Indian Head Rock.

"I was wondering how (Duvall) was going to prove that myself," he said.

A hearing on Duvall's motion is scheduled for 1 p.m. Thursday before Greenup Circuit Judge Bob Conley.

After being floated to the surface of the water, the rock was removed from the river by a crane and taken to the Portsmouth City Garage, where it remains today.

The rock's removal touched off a fierce war of words between lawmakers in Kentucky and Ohio and prompted strong partisan feelings on both sides of the river.